1947.

File No. O. Evidence/47

Legal Deptt.

A BRANCH

K

Subject:— Opinions under the Indian Evidence Act 1872.

P. 69
E

File No. O. Evidence/47

303-A

Office of the R.L.A.

The G.R. G.D., No. 3362, dated the 10th July 1931, contains Rules for the examination qualifying for the appointment of accounts clerks in District Local Boards and copies of the G.R. have been supplied to District and Taluka Local Boards. Being a Resolution of Government it is a public document within the meaning of section 74 of the Indian Evidence Act and under section 76 a person who has a right to inspect will be entitled to have a certified copy of the document. Whether a person has a right to inspect or not would depend on whether he has sufficient interest in it (see p. 614 Sarkar's Law of Evidence). An employee of a District Local Board desirous of qualifying for the post of accountant by passing the examination will naturally have an interest in the orders contined in the aforesaid G.R. and he will be entitled to ask for a copy of the same. His request can only be refused if the matter attracts the provisions of section 123 which enacts that no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of state except with the permission of the officer at the head of the Department concerned. The provisions of this section can be invoked to protect secrets of state or matters, the disclosure of which would be prejudicial to the public. There is, however, nothing in the present G.R. to invoke the provisions of this section and hence there does not appear any objection to grant the certified copy asked for.

P.T.O.

This reference purported to be made to the Legal Department is really a reference to the R.L.A. for his advice and should have been made by the Under Secretary, Deputy Secretary or the Secretary (cf. Rule 104 of Secretariat Instructions).

Sd/-
Remembrancer of Legal Affairs.

U.R. to G.D., No. 2940, dated the 26th March 1947.

KGG./12/6
4Cs.

Office of the R.L.A.

Before certified copies can be given it must be shown (1) that the documents of which certified copies are required are public documents and (2) that the person applying for such copies has a right to inspect such documents (section 76 of the Indian Evidence Act). Whether a person has a right to inspect or not would depend on whether he has sufficient interest in it (Sarkar: Law of Evidence, p.614). The documents at serial numbers 2, 3 and 4 of Mr. Khare's letter cannot be regarded as public documents. Mr. Khare's letter also does not show what interest his client has in these documents. Consequently he is not entitled to demand certified copies of these documents.

Sd/- P.M.L.
18/4
Remembrancer of Legal Affairs.

U.R. to Milk Commissioner, No. 3845, dated the 18th April 1947.

KGG./12/6
4Cs.

Office of the R.L.A.

It is for the Revenue Department to decide whether privilege should be claimed under section 123 or section 124 of the Evidence Act in respect of the Government Resolutions pertaining to that Department. Prima Facie however there can be no objection to produce the G.Rs. in question without the preambles, as they contain nothing confidential or detrimental to the public interest and since in pursuance of the orders in the G.Rs. notifications have been published in the Official Gazette.

If the R.D. decides to produce the G.Rs. certified copies with the originals may be sent to the Collector with instuctions to depute some one from his office to attend the Court with the documents. If privilege is to be claimed procedure in Rule 176(7) of the Law Officers Rules may be followed.

As regards the missing file the court may be informed of the fact.

The Schedule B attached to the Summons mentions G.R., L.D. No. S.12, dated 8-10-1929. That G.R. relates to the sanctioning of the defence of Appeal No. 272 of 272 of 1929 in the High Court, Bombay and is not of the nature the plaintiff imagines it to be. There is no objection to Secretary, R.D. producing a certified copy of the same in Court in pursuance of the summons. The other L.D. G.Rs. to which a reference is made in pages 23-27 ante are not required to be produced in Court as the Schedule B

to the Summons makes no reference to them.

Sd/- P.M.L.
16/6

U.R. to R.D., No. 6048, dated the 10th June 1947.

KGG./12/6
4Cs.

Office of the R.L.A.

Section 74 of the Evidence Act provides that the following documents are public documents:-

(1) Documents forming the acts or records of the acts-

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative judicial and executive, whether of British India, or of any other part of Her Majesty's dominions or of a foreign country;

(iv) public records kept in British India of documents, private documents.

"The act of which the record made is a public document must be similar in kind to the act which takes shape in a public document. The kind of acts which this section has in view is indicated by section 78 (See Sarkar's Evidence Act p.615). Contracts executed between Government and private parties do not appear to be acts falling under section 78. In Harechur v. Charn Manghi (22 W.R.335) and Harish V.Prosumno (22 W.R.303) it was held that a deed of sale is not a public document (ibid p.620). Similar would be the character of a contract. Consequently a contract between Government and a second party would not be a public document.

The inquiry whether the contract is a public document has not much relevance to the question asked by Mr. Mandlik. His invitation to Government to lay the contract on the Council Table is one item of the information he seeks by his Question in connection...

No.206, as the Milk Commissioner rightly says he has asked for the copy of the contract "amongst other information." Even taken by itself asking Government to place papers on Council table is tantamount to asking Government for information; and the question would fall under Rule 52(1) of the Bombay Legislative Council Rules. Ordinarily if any information asked for by a member is available with or is within the cognisance of Government , it should be supplied, unless there are special circumstances for withholding it, e.g. on the ground of its being confidential or on the ground that it is not in public interests to supply the information. These grounds are recognised in Parliamentary practice in England and in this country. See May's Parliamentary Practice, 14th Edition p.234; Supplement to the Digest of Rulings of the Presidents-Bombay Legislative Council p.51; A selection from the Decisions of the Chair-1942 (Legislative Assembly Central) pp.216-7. In this last ruling No.325 at p. 216, the President ruled that public interest is a well-known phrase; and whether a particular matter is or is not in the public interest, it is entirely for the Government to judge.

It is, therefore, for Government in the administrative Department concerned to decide whether on either of these grounds the contract should be withheld.

Sd/-P.M.L.
28/5/47
Remembrancer of Legal Affairs.

U.R. to Milk Comsr., No. 5530 dated the 28th May 1947

KGG.
12/6
4cs.

R.I.No. 7499/24-6-47.

Submitted.

2. It appears from the letter of the D.J.Ratnagiri at page 1 ante that Mr. G.R. Kokane, Dept Relief Assistant, Khed who was arrested for receiving illegal gratification was suspended pending the decision of the case against him. Mr. Kokane has now asked for a certified copy of G.R., R.D. No. 571/45, dated the 9th January 1946 for production in the Court. Before deciding the question whether the G.R. can be supplied to a private party the R.L.A. is requested to advise whether there is any legal objection to supplying certified copy to him.

3. By G.R.R.D. No. 571/45, dated the 9th Jan. 1946 Govt. has directed that no vakalatnamas should be taken from Backward class debtors and that the Debt Relief Assistants should assist only backward class debtors as directed in the G.R. dated 22-9-1945. A copy of the latter G.R. is not forwarded by R.D. The G.R. does not appear to be confidential nor does it appear that its disclosure would be detrimental to public interest. There appears therefore no objection to supplying a copy of the G.R. to Mr. Kokani. Before however granting a copy of the G.R. it is for the R.D. to see whether its production would in any way prejudice the result of the criminal case pending against him.

Sd/- P.S.Nadkarani

Since G.R.R.D. No. 571 dated 9-1-1946. contains no confidential information there appears to be no Legal objection to supplying a copy thereof to Mr. Kokane.

Sd/- R.T.Katarki.
1/7

R.L.A. I agree

S/D. D.N.vas.
1/7

U.R. to R.D. No. 6812, dated 2-7-47.

KGG/12/6
4Cs.

119-Confl.
22-4-47.

Please see the R.L.A.'s opinion No. 3160 of 14th April 1947. The R.D. has now referred back these papers for advice on the question raised in paragraph 14 of the R.D. note of 2-12-1946 at p. 35 ante. In their letter dated 14-8-46 the lessees have requested for certified copies of the application dated 3-5-1946 from Mr.Y.R.Joshi and the application dated 14-6-1946 from the villagers of Mandwa Matiad. The R.D. wants to know whether the copies asked for should be given or not.

Under section 76 of the Evidence Act, certified copies can be given only of public documents of the nature described in section 74 and only to a person who has a right to to inspect such document. The two applications under reference addressed to the Minister(R.) and complaining of certain breaches of the lease alleged to have been committed by the lessees cannot be regarded as public documents. They were rather in the nature of confidential communications which led to an inquiry. Consequently the lessees cannot as of right demand certified copies of the two applications. It appears however that the lessees

P.T.O.

have already been supplied with copies of other applications from the villagers and the statements made by the latter before the Mamlatdar. The application of the villagers dated 14-6-1946 contains for the most part the applicants' contentions in support of the allegation that the lease is liable to forfeiture. There seems no objection to the lessees being supplied with certified copies of the applications on payment of usual fees.

Sd/-
9-6-47.

A.C.R. Pl. send application of pp. 13 to 17 to O.T. for a ~~foundation~~ translation in English.

Sd/- R.T.K.
10/6.

Office.

Submitted with translation of the application at pp. 13-17ante.

Sd/- T.Y.C.
24/6.

A.C.R. There is nothing objectionable in the two documents A-A of Mr. Mehta's note may be the reply.

Sd/- R.T.K.
30/6.

H.L.A. I agree

Sd/- D.V.V.

KGG./13/6.
4Cp.

No. 1980 of 1947.
Oriental Translator's Office,
Bombay, 23rd June 1947.

Memorandum:

The undersigned presents compliments to the Remembrancer of Legal Affairs and in returning herewith the accompaniment received with Memo. No. 6144, dated 13th June 1946, has the honour to state that it is a Gujarati petition dated 14-6-46 from Mr. Kashiram Bhagwan and others of Matiad, Taluka Ankleshwar, District Broach, addressed to the Hon. Minister for R.D. The Writers state that Matiad "Bet" which is under Government control has been leased to M/S Jehangirji Dinshawji Dalal and some of Sajod, under the pretext of "Reclamation" inspite for Government orders in 1939 to cancel the Lease-Deed in response to the demand of the people in their petition dated 26th October 1938. The Writers claim that the land covered by the "bet" originally belonged to them it should be returned to them as soon as it was fit for cultivation and point out that the Collector had no right to hand over the same to anyone whom he chose. They also point out that the amount Rs. 318-12-0 mentioned as rent in the Lease-Deed is really speaking the yearly instalment of the amount of fine imposed on M/S Jehangirji Dinshawji Dalal for cutting Government-owned trees without permission They further point out that out of 3000 acres of land given under the Deed, only a portion of it belongs to Matiad village while the rest belongs to Taria and

P.T.O.

Dhanturia villages, which is not mentioned specifically in the Deed. The writers state that under Government orders issued in 1939, the Deed would be valid for 10 years only i.e. upto 1945 after which the Collector had no right to renew the Deed. The Writers complain that Mr. Dalal had divided the land in small plots which he leases on tenancy basis to the farmers of Dhanturia, Taria and Matiad, which will be evident from a perusal of Form No. 7 and 8A for 1944-45 and 1945-46. In conclusion, they request Government to do the needful in the matter.

Sd/-
Oriental Translator to Government.

KGC./13/5.
4Cs,

Office of the R.L.A.

In their letter dated 14-6-1946 the lessees have requested for certified copies of the application dated 3-5-1946 from Mr. Y.K. Moshi and the application dated 14-6-1946 from the villager os Mandwa Matied. The R.D. wants to know whether the copies asked for should be given or not.

Under section 76 of the Evidence Act, certified copies can be given only of public documents of the nature described in section 74 and only to a person who has a right to inspect such document. The two applications under reference addressed to the Minister (R.) and complaining of certain breaches of the lease alleged to have been committed by the lessees cannot be regarded as public documents. They were rather in the nature of confidential communications which led to an inquiry. Consequently the lessees cannot as of right demand certified copies of the two applications. It appears however that the lessees have already been supplied with copies of other applications from the villagers and the statements made by the latter before the Mamlatdar. The application of the villagers dated 14-6-1946 contains for the most part the applicant's contentions in support of the allegation that the lease is liable to forfeiture. There seems no objection to the lessees being supplied with certified copies of the applications on payment of usual fees.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5809, dated the 2nd July 1947.

KGG./12/6
4Co.

L.D. E.I.No.208-Confl. dated 21-6-47.

Submitted.

Please see Under Secy. R.D.Se note dated 20-6-47 at pp.7-8 ante. The facts appear to be as follows:-

One Mr.S.A.Dehlavi of Sindgi, an Excise Inspector, is being prosecuted for the offence under section 161, I.P.C. in the Court of the S.D.M., Bijapur Division, Bijapur. His pleader has called upon the Commissioner of Excise to grant him certified copies of certain correspondence which, it is alleged, has passed between the Dy.S.P., Anti-Corruption branch and Mr. Hearn, former Superintendent of Excise, Belgaum Division. It is alleged that this correspondence will be useful at the time of cross-examination and would materially help the accused to prove his innocence (p.3 ante). On receipt of the application, the Comm'r. of Excis seems to have examined the confidential correspondence and has come accross a letter which is in following terms:

"Sir,

The informant, from Shindgi, District Bijapur had come to me complaining the Excise Assistant Inspector had called him to Shindgi and threatened him that if he comes to him again he would be killed. He further told him that he had been to Belgaum and had seen you etc.

connection...

Under these circumstances the informant told me he could not go to him and that our work would suffer. Will you let me know what we could do in the matter.

Yours obediently,
Sd.N.T.Bhonsale,
Dy.S.P. A.C.Br. Bombay."

Regarding this letter, the Commr. of Excise states as follows:-

"The only interpretation I can put upon this letter is that the Inspector Dehlavi drove away the agent provocateur and this seems strong evidence in his favour. On the margin of the file there is a note in what I think Mr.Hearn's handwriting to the effect that another informer must be found. I do not know the details of the case against Mr.Dehlavi but it does look rather as if the Anti-Corruption Branch have somewhat exceeded the bounds of discretion. If this is so an acquittal coming on top of the recent acquittal of Excise Inspector Shetti of Khanapur will not look very good.

Under these circumstances two questions have been raised and referred to R.L.A. for advice. They are:-

(1) Whether the papers should be produced in court and anti-corruption methods should be exposed; or

(2) The case should be withdrawn.

The facts under which Mr.Dehlavi came to be implicated in an offence under section 161,I.P.C., are not ascertainable from these papers. Before a case was launched the police must have found a prima facie case against him. It is not clear how the correspondence that was exchanged between the Police officers before Mr.Dehlavi was caught would be relevant and how it could prove his innocence. In

P.T.O.

criminal proceedings the fact that the person accused is of a good character is relevant (S.53, Evidence Act); and to prove his good character Mr.Dehlavi can bring his own independent evidence. He cannot however compel Police officers to produce confidential correspondence from official records. Privilege under sec.123 or 124 of the Evidence Act can be claimed in respect of the documents copies of which have been asked for by Mr.Dehlavi's pleader. It does not at all appear necessary to concede his request.

Under sec. 494 of the Cr.P.C. it is competent to the ~~xxkkx~~ Public Prosecutor to withdraw a prosecution. The powers under this section are to be exercised if the evidence is insufficient to secure a conviction. It is not known whether that is the case in this prosecution and hence it is not possible to say whether the case should be withdrawn under sec.494.

Sd/-M.P.Rege.
26/6

A.A.G. It appears that Mr. E.A. Dehalvi,

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Office of the R.L.A.

Justice is the primary object of all trials, and we cannot recommend a course of action which might cast any shadow of suspicion on the purity of justice. The duty of the Public Prosecutor is to keep the ends of public justice uppermost in his mind, and, therefore it cannot be his business to secure conviction at any cost. If the prosecution possesses evidence which if put before the Court is likely to help the accused or cast serious suspicion on the bona fides of those who are responsible for his prosecution, it is the duty of theprosecution not to suppress such evidence but to produce it in the Court and leave it to be appreciated by the Court. Although, therefore, strictly speaking it would be legal to object to the production of documents by claiming privilege under section 124 of the Evidence Act, it would not be fair or just to refuse the production of papers, where the said evidence is difinitely likely to vindicate the ends of justice.

2. If the production of documents is likely to affect adversely the reputation of the Anti-Corruption Branch, it would be descreet to withdraw the case. The present request of the accused's lawyer, which is for certified copies of the correspondence, may be refused on the ground that the correspondence is not a public document. But then, in that case, it is probable that the accused may ask for the production of the correspondence in Court, and in that case

P.T.O.

it may not be quite right or fair to refuse the request. This position may be discussed with the Anti-Corruption Branch and then a decision may be taken as to the proper Course to be followed.

Sd/-
Remembrancer of Legal Affairs.

U.O. to R.D.,No.239Confl. dated the 2nd July 1947.

KGS./13/6.
4Cs.

G.D.R.I. No.-2003/20-2-47.

Submitted with reference to the H.D. note at page 5 ante.

2. It appears that it has been a practice with the Honorary Presidency Magistrates in Bombay to attest the documents brought in Court before them for the purpose. Government has recently decided that the Courts of the Hon. Presidency Magistrates should be abolished i.e. the Hon. Presidency Magistrates are to be divested of Court work but are to be continued for the attestation purposes in order to avoid inconvenience to the public. Since the Hon. Presidency Magistrates will then have no courts where they can attest the documents as before, H.D. proposes, on the Chief Presidency Magistrate's suggestion, that the Hon. Presidency Magistrates should be allowed to attest the documents at their residence or place of business and their seal should be affixed on these documents by the Registrar at the Chief Presidency Magistrate's Court. That Department has accordingly put up a draft letter to the Registrar, High Court, (A.S.), requesting for a suitable amendment of rule 138 of the High Court Circular Orders, which requires that the documents to be attested should be brought to the Court. Before the draft letter is issued, the R.L.A. is requested to advise whether the Chief Presidency Magistrate's suggestion that the documents should be attested by the Hon. Presidency Magistrates at their residence or place of business and sealed by the Registrar at the Chief Presidency Magistrate's Court is legally unobjectionable.

connection....

3. The Chief Presidency Magistrate supports his above mentioned suggestion on the following grounds :-

"It might lead to an improper use of the Seals if these are given to the Honorary Magistrates seeing that they are not expected to be conversant with the various types of documents sent to them for signature from the view point of stamps duty and registration etc., It is apparent that much distress will be caused to litigants if documents are not sealed for stamped according to the provision of the law concerning them. It would mean undue annoyance to the Departments concerned and to the Courts before which they are produced in evidence and these probabilities are ruled out by the Controlling influence of the Registrar, who would be made responsible for its proper use."

4. The question that arises is whether the two acts of signing and sealing can be separately done at two different places. As rightly observed by the Chief Presidency Magistrate in his note at p. 7 ante, a Court will take judicial notice of the authentication of a document on the analogy of sec. 85 of the Indian Evidence Act, 1872, and will dispense with proof of attestation on the ground that the document was executed before a Court whose seal it bears. Further, as under sec. 57(5) of the Evidence Act, the Court shall take judicial notice of the seals of all the Courts of British India, it is clear that it is only the seal of a Court on a document that shows that that document has been properly authenticated. Consequently it appears that to be a valid authentication, the signature of the Hon. Presidency Magistrate and the seal of his Court will have to be put on simultaneously in Court on the documents produced for authentication.

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The High Court Circular No. 138 that the documents to abe authenticated should be produced in Court recognises the abov e legal position. The Chief Presidency Magistrate's suggestion that the documents to be authenticated should be signed by the Hon. Presidency Magistrate at their residence and sealed by the Registrar at the Chief Presidency Magistrate's Court does not therefore appear to be legally feasible.

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Office of the R.L.A.

Circular No. 139 of the Circulars issued by the High Court for the guidance of the Criminal Courts and officers subordinate to it inter alia provides :-

"These attestations should only be made when the documents mentioned are brought to the Court. Parties who require documents to be attested at their own houses should have recourse to the Registration offices."

Since the Honorary Presidency Magistrates have ceased to try any cases from the beginning of this year, the question of Attestation of documents by the Hon. Presidency Magistrates has been raised. The Chief Presidency Magistrate in his endorsement at p. 7 ante has suggested thus :

"As Honorary Magistrates are no longer attached to courts, the rule under reference (i.e. Circular No. 139) would require to be so amended as to enable the documents to be executed before such Magistrates at their place of business or at their residences, and the seals may be affixed by the Registrar so that the provisions of section 85 of the Evidence Act would give the document the benefit of presumption."

R.D. proposes to move the High Court to amend the Circular No. 139 as proposed by the Chief Presidency Magistrate. The R.L.A. is requested to advise whether the suggestion of the Chief Presidency Magistrate to connect on...

that the documents should be attested by the Honorary Presidency Magistrates at their places of residence and sealed by the Registrar at the Chief Presidency Magistrate's Court would be legal if accepted.

Section 85 of the Evidence Act provides that the Court shall presume that every document purporting to be a power-of-attorney and to have been executed before and authenticated by a notary public, or any Court Judge Magistrate etc. was so executed and authenticated. Under section 57(6) the Court shall take judicial notice of the seals of all the Courts of British India. "Authentication must mean more than attestation, for what is required is an assurance of the identity of the person who has signed the instrument as well as the fact of execution" (see Sarkar's Evidence Act, p. 644). It appears therefore that to justify a presumption under section 85 of the Indian Evidence Act what is necessary is that the document must bear the signature of the Honorary Presidency Magistrate and the seal of his court in proof of its attestation and authentication. If the Honorary Presidency Magistrates are not now attached to any Court, the use of the seal of the Court to document attested by the Honorary Presidency Magistrates may not be considered sufficient to raise the necessary presumption under section 85 of the Indian Evidence Act, although such use of the seal may not be illegal.

Sd/-
Remembrancer of Legal Affairs

U.R. to H.D., No. 2502, dated the 14th April 1947.

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5804
29-4-47.

Attention is invited to R.L.A.'s opinion No. 3595 dated 14-4-47. The Secretary H.D. holds that the difficulty is a technical one and that it could be get round by attaching Honorary Magistrates nominally to particular Courts. R.L.A. is requested to advise whether the view expressed by the Secretary, H.D. is correct.

As the Courts of Honorary Presidency Magistrates are abolished, the Courts to which the Honoraty Presidency Magistrates could be attached will be those of Stipendiary Magistrates. The effect would be that as an Honorary Presidency Magistrate, he would be using the Seal of a Stipendiary Magistrate's Court. This will create anamalous position and would not solve the difficulty.

It appears that under section 57(7) of the Evidence Act, the Court can take judicial notice of the signatures of the persons filling any Public Office in British India, like the Honorary Presidency Magistrates.

Sd/-
7/6

A.L.H. Reply may be :-

The mere attachment of Honorary Presidency Magistrates to certain Courts would not be enough for the purpose. What is necessary is that the Presidency Magistrates thus attached

P.T.O.

must be enjoying the states of a court possessing powers.

Sd/- R.T.K.
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R.R.A.

Sd/- D.V.V.
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4Cs.

Office of the R.L.A.

The mere attachment of Honorary Presidency Magistrates to certain courts would not be enough for th purpose. What is necessary is that the Presidency Magistrates thus attached must be enjoying the status of a court possessing powers.

Sd/- D.V.V.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 7270 dated the 15th July 1947.

KGG/13/6
4Cs.

L.D.R.I.No. 7105/16-6-47.

Submitted.

From one Mr. I. G. Marihal of Kittur, Dist. Belgaum, Govt. received a complaint to the effect that Mr. C.M. Bhadagaonkar, clerk in charge of the Agricultural Depot at Kittur, which has been opened for the supply of groundnut cake and paddy seed to the cultivators of Kittur, was selling the paddy and cake in black market. The complaint was forwarded to the D.M., Belgaum who entrusted the matter to the police for inquiry and investigations. A Sub-Inspector of Police accordingly made inquiries, took down statements (which are in vernacular) and submitted a report to the D.M. which is at pp.49-51 of the papers placed below. In his report, the Sub-Insp. states:

"There is no evidence to prove definitely that Kittur Agriculatural Depot Clerk, C.M. Bhadgaonkar or any other person concerned therein having sold paddy or ground nut cake at black market rate. It is seen that S.V. Marihal of Kittur has taken a lead in this case and the people are not willingly coming forward to state the truth." The Sub-Inspector then cites certain instances and concludes :

"The records are not properly kept. Proper cash memo. books, and day books have not been maintained. It is not possible to prosecute C.M. Bhadgaonkar on the uncorroborated oral testimony of these above mentioned persons." In forwarding the report and the papers to Govt. the D.M., Belgaum observes:-

connection.....

"The Police Sub-Inspector reports that the only evidence against Mr. C.M. Bhadgaonkar, the clerk in charge of the Agricultural Depot at Kittur is oral evidence and that there is no documentary evidence. He is therefore of the opinion that a criminal case, i filed, will not stand in the Court of law. I disagree with him. In such cases it is virtually impossible to secure documentary evidence and I do not see why a person against whom oral reliable evidence can be led should not be convicted."

The Agr. and Rural Development Deptt. considers that it is doubtful whether only oral evidence, however, reliable will be sufficient for a successful prosecution and R.L.A. is thereforexx requested to advise in the matter.

Parole evidence is admissible when it is the best evidence of the facts to be proved e.g. where it is the evidence of a person who saw or heard them. It is hence quite possible to secure a conviction on oral evidence alone. In the present case, however, the evidence that will be available is the evidence of accomplices of persons who allege to have made purchases from the clerk by paying black market price (vide the Report of the Sub-Inspector at pp. 49-50 of the case papers). This evidence, the Sub-Inspector has stated, is uncorroborated. Uncorroborated evidence of an accomplice is not sufficient to prove the guilt and no court will convict on such evidence unless it is corroborated in material

P.T.O.

particulars. This being the position it appears that it would be difficult to launch a successul prosecution against the Clerk, Mr. Bhadagaonkar.

Sd/- MPP.R.
1/7/47.

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4Cs.

It is not possible to lay down a hard and fast rule as to the quantum of evidence which may be considered sufficient for conviction in a particular case or to anticipate whether a Court will convict or acquit in a given case, since the decision of a case always depends on its own circumstances and appreciation of evidence by the Court concerned. It is undoubtedly true that there is no rule of law which says that documentary evidence is necessarily better than oral evidence or that no conviction can be recorded unless there is documentary evidence to support it. All that the Courts require is good, sufficient and reliable evidence. The question, therefore, for consideration is whether in this case the evidence which the prosecution will be in a position to put before the Court is likely to be considered good, sufficient and reliable for the purpose of conviction. It appears that the only evidence which is likely to be put before the Court in this case is the evidence of accomplice witnesses, that is, persons who are alleged to have paid black-market price to Mr. Bhadgaonkar. We do not know whether any independent persons were present at the transactions between Mr. Bhadgaonkar and Messrs. Basappa, Appaya and Shidram. At any rate, it appears that there is no likelihood of the evidence of any such persons being led before the Court. The question, therefore, is whether the evidence of Messrs Basappa, Appaya and Shidram can be called good, sufficient and reliable evidence. Although there is a rule of law in the Indian Evidence Act that a conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice, the Courts of law are

invariably following a rule of prudence, namely, that it is unsafe to convict merely on the strength of uncorroborated evidence of an accomplice witness. Accomplice evidence ex is tainted evidence, and, therefore, the Courts do not convict a person if such evidence is not independently corroborated. As the evidence which is likely to be led in this case is going to be the evidence of only accomplice witnesses, it is not possible to advise that Mr. Bhadgaonkar can be successfully prosecuted. If necessary, Government may deal with him departmentally.

Sd/- [illegible]

Remembrancer of Legal Affairs.

U.R. to A.R.D.D.No.7035, dated the 9th July 1947.

G.V.V. 13
4 c.

Submitted.

One Rao Sahib V.T.Shah who is threatening to challenge the land acquisition proceedings in respect of S.No. 63/2 of Achar Village, Ahmedabad Dist. had requested Govt. to grant him certified copies of the documents and orders mentioned in his letter at pp.1-3 ante. In reply Govt. informed him, inter alia, that in respect of some documents Govt. would be prepared to grant him certified copies on his depositing Rs.20/-, while in respect of some others his request cannot be granted. Thereupon, the said Rao Saheb V.T. Shah wrote back saying that in law he was entitled to copies and requested that he should be granted the same in respect of items Nos. 2,4,7, 8, 10, 11 and 12 of the Govt. letter at p. 19 ante. R.D. has considered the question and has decided to grant copies of documents at items Nos. 4,8,10 and 11 and to refuse in respect of the three others. As however the applicant insists that he is in law entitled to get the copies the R.L.A. is requested to state whether the view taken by R.D. (in respect of items of which no copies are to be given) is correct x (vide A.S., R.D.'s note dt. 21-6-47 at p. 26 ante).

Items 2,7 and 12 of which no copies are to be granted are as follows:-

(2) Report made by the Collr. of Ahmedabad to the Provincial Govt. to enable Govt. to issue notification under s. 4 of the L.A.Act.

(7) Report of the Collr. and his recommendations under s 5A of the Act and

(12) Collector's report in connection with facts submitted in letter dt. 23-12-1946 by applicant's attorneys M/s. Mulla and Mulla.

G.G. 13.6.4 c.

The reasons for not granting copies of these documents are that these reports are a made by the Collr. in official confidence. The applicant, however, states:-

"As regards item Nos. 2 and 7 regarding certified copy of the Collr's report, I submit that I am entitled to the copies of these reports as they are part of the acquisition proceedings which are governed by statute. As a person affected I am entitled to the copies thereof. You are aware that they are highly relevant. Being proceedings under the Land Acquisition Act, these are not secret state papers and form part of the proceedings under the Act and I am accordingly entitled to inspection and copy thereof."

As regards item 12 also the applicant has similar grounds to advance (vide p. 21 ante).

The first document (i.e. item No. 2) is at p. 1 of File 10109/39 Part I. It is merely a forwarding letter enclosing a draft notification under s. 4. The second document (i.e. item No. 7) is at p. 49 of the same file. It is the Collr's report under s. 5A. The Third document is at p. 111 of loose papers bearing No. 10109/39/26680. It is a confidential report.

Under s. 76 of the Indian Evidence Act, every person who can show that he has an interest for the protection of which it is necessary that liberty to inspect a public document should be given to him, has a right to inspect the docu-

ment should be given to him, has a right to inspect the document and can on payment demand a copy thereof. When an application for a copy of a public document is made by a person having the right to inspect, the public officer having

the custody thereof must give that person a copy on payment. But the words "right to inspect" in section 76 of the Evidence Act exclude all such documents as a Govt. Officer has a right, under s. 123 or 124 of the Act to refuse to show on the ground of State policy or privilege, etc (cf. Devidatt v. Shriram, 56 Bom. 324 at p. 341). Under s. 124 privilege can be claimed in respect of communications made in official confidence if it is considered that public interest would suffer by the disclosure. The reports of the Collr. are made in official confidence and if H.E. considers that their disclosure would be against the public interest it would be entitled to refuse certified copies thereof to the applicant. The Collr's. letter No. [illegible] 1683, dated the 20th May 1944 (item No. 2) of which the applicant is asking a copy does not, however, contain any confidential matter and prima facie there can be no objection to grant

K.G.Gs.

Office of the R.L.A.

The view taken by the Revenue Department that no certified copies can be granted of documents at serial Nos. 7 and 13 is correct. The document at serial No. 2 appears to contain nothing confidential and there appears no objection to granting a certified copy of it.

Sd/-

Remembrancer of Legal Affairs

U.O. to R.D., No. 7806, dated the 29 July 1947.

K.O.O. 13.6.47.

Submitted.

2. Mr. Motilal K. Desai has requested R.D. for copies of G.R., R.D., Nos. 3691, 2240 and 234, dated the 30-8-1865, 20-6-1866 and 17-1-1867 respectively together with some other documents regarding the Old Vatandari. He has however not stated for what purpose these documents and G.R.s. are required.

3. R.D. at p. 25 has stated as follows:-

"R.L.A. has advised that copies of privileged documents need not to be supplied to members of the public and that G.Rs, which contain references to opinions of Government Officers without which they are not intelligible, may not be supplied."

G.R., R.D., No. 3691, dated 30th August 1865 pertains to the Settlement of the Watans of the Hereditary Distt. officers of the Ahmedabad Collectorate and contains references to observations and opinions of the Revenue Commr., N.D. It may therefore be classed as a privileged document.

G.R., R.D., No. 2240, dated 20th June 1866, also contains opinions of Govt. officers, viz., Settlement Officer, N.D. and Revenue Commr., N.D. and it is not intelligible without those opinions. It therefore appears to be a privilege document.

Under G.R., R.D., No. 234, dated 17th January 1867, Govt. approved the form of Sanad to be granted to those of the Distt. Hereditary Officers of Gujarat who had accepted what was called a "non Service Settlement." This G.R., does not appear to be a priviledged document, and as such there may not be any objection to the supply of a certified

copy of it to the petitioner."

L.D. is however requested to advice in the matter before a reply is given to the applicant.

4. R.L.A. in his opinion No. 5746, dated the 19th Aug. 1946, on the same subject has opined that-

"Under section 76 of the Indian Evidence Act the custodian of a public document which a person has a right to inspect, shall give on demand a copy of the document with a certificate that it is a public document. The phrase "has a right to inspect" Saves and excludes all such documents as the Government has aright to refuse to show on the ground of state policy, privileged communications etc. (see Sarkars' Evidence Act p. 622). Government Resolution, containing opinions of Government officers, including alegal adviser, is a privileged document within the meaning of section 123 of the Indian Evidence Act (see Sursingji Dajiraj vs. Secretary of State, 28 B.L.R. 1213 at p. 1217)."

He further state that "G.Rs. which contain references to opinions of Govt. officers without which they are not inteligible can therefore be treated as privileged documents the inspection of which can be refused."

Thus G.R., R.D. Nos. 3691, dated the 30th Aug 1865 and 2240, dated the 20th June 1966 can be treated a privileged, as they are not inteligible without the opinions of the Revenue Commissioner,

P.T.O.

N.D. and the Settlement Officer N.D. and the copies can be refused to the applicant.

But in respect of G.R., R.D. No. 234, dated the 17th January 1867, which approves the form of Sanad to be granted to certain officers, no privilege can be claimed, as the resolution by itself is complete and no opinion or report of the Govt. Officers ar referred in it.

The view taken by R.D. at p. 25 ante is correct. The papers may be seen and returned.

Sd/- K.B.B.
2/8.

KGG/14/6.
4Cs.

Office of the R.L.A.

G.Rs. Nos. 3691 of 30th August 1865 and 2240 of 20th June 1866 are privileged documents as held by the R.L.A. in his opinion No. 5746 of 19th August 1946, but it is open to Government either to claim the privilege or waive it. A request for the supply of certified copies of documents need not necessarily be refused on the academic ground that the documents fall within the class of privileged documents. The primary factor for consideration in deciding such applications is whether the supply of copies of such documents will be harmful to Government or public interests. Prima facie it is not clear how Government or public interests will suffer if the copies of the two G.Rs. are given but that is a point which must be decided finally by the administrative department.

There is no objection to the supply of a certified copy of G.R. No. 234 of 17th January 1867.

Sd/-
Remembrancer of Legal Affairs

H.R. to R.D., No. 5291, dated the 12th August 1947.

KGG/14/6.
4Cs.

Office of the R.L.A.

Statement of the Case.

Circular No. 138 of the Circulars issued by the High Court for the guidance of the Criminal Courts and officers subordinate to it inter alia provides :-

> "These attestations should only be made when the documents mentioned are brought to the Court. Parties who require documents to be attested at their own houses should have recourse to the Registration offices."

Since the Honorary Presidency Magistrates have ceased to try any cases from the beginning of this year, the question of attestation of documents by the Honorary Presidency Magistrates has been raised. The Chief Presidency Magistrate in his endorsement at page 7 ante has suggested thus :

> "As Honorary Magistrates are no longer attached to courts, the rule under reference (i.e. Circular No. 138) would require to be so amended as to enable the documents to be executed before such Magistrates at their place of business or at their residences, and the seals may be affixed by the Registrar so that the provisions of section 86 of the Evidence Act would give the document the benefit of presumption."

H.D. proposes to move the High Court to amend the Circular No. 138 as proposed by the Chief Presidency Magistrate.

The R.L.A. who was requested to advise whether

connection.....

the suggestion of the Chief Presidency Magistrate that the documents should be attested by the Honorary Presidency Magistrates at their places of residence and sealed by the Registrar at the Chief Presidency Magistrate's Court would be legal if accepted in his opinion No.3595 dated the 14th April 1947 observed as follows :-

"Section 85 of the Evidence Act provides that the Court shall presume that every document purporting to be a power-of-attorney and to have been executed before and authenticated by a notary public, or any Court, Judge, Magistrate etc. was so executed and authenticated. Under section 57(6) the Court shall take judicial notice of the seals of all the Courts of British India. "Authentication must mean more than attestion, for what is required is an assurance of the identity of the person who has signed the instrument as well as the fact of execution" (see Sarkar's Evidence Act, p. 644). It appears therefore that to justify a presumption under section 85 of the Indian Evidence Act what is necessary is that the document must bear the signature of the Honorary Presidency Magistrate and the seal of his court in proof of its attestation and authentication. If the Honorary Presidency Magistrates are not now attached to any Court, the use of the seal of the Court to documents attested by the Honorary Presidency Magistrates may not be considered sufficient to raise the necessary presumption under section 85 of the

connection....

Indian Evidence Act, although such use of the seal may not be illegal."

The papers were again referred to the R.L.A. for advice as to whether the difficulty would not be get round by "attaching" Honorary Magistrate nominally to particular Courts; and the R.L.A. in his opinion No. 7270 dated the 15th July 1947 held that;

"The mere attachment of Honorary Presidency Magistrates to certain Courts would not be enough for the purpose. What is necessary is that the Presidency Magistrate thus attached must be enjoying the Status of a Court possessing powers."

Since Secretary, H.D. has now requested the R.L.A. to obtain the Advocate General's opinion in this case the Advocate General is requested to favour Government with his opinion.

Sd/-
Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No. 8354 dt. the 14th Aug. '47.

KGG/14/6.
4Cs.

No. 5397/1947.

Advocate General's Chambers,
High Court,
Bombay, 10th October 1947.

U.O.R. to the Advocate General of Bombay,

No.248 of 1947 dated the 16th of January 1947.

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O p i n i o n .

Under section 3 of the Evidence Act, Court is defined as including all Judges and Magistrates and all persons, except arbitrators, legally authorised to take evidence. Under section 57 of the same Act, the Court is bound to take judicial notice of the seals of all courts of British India. Honorary Presidency Magistrates are ordinarily magistrates within the meaning of that word used in the definition section. It does notappears appear to me that a Magistrate should necessarily have authority to take evidence in order to constitute him a Magistrate It is a status or office held by a person independently of whether he has judicial powers or not, so long as he has some duty to keep the peace. The words "legally authorised to take evidence in section 3 relate to the words "all persons" and not the words "Judges and Magistrates." Consequently a magistrate may have a seal being "Court". Section 85 of the Evidence Act refers to every document which is a power of attorney which, if executed before and authenticated by the Court, be presumed to have been

connection...

so executed and authenticated. To justify the presumption under that section the document must bear the signature of the magistrate and the seal. If I am right in saying that the magistrate need not have power to take evidence in order to constitute him such, them being a court he can have his own seal which may be affixed by him.

The Circular No. 138 was drawn up when the magistrates had a court in the usually understood sense i.e. a place where they sat and heard evidence, and there was a seal of that court as such. I think the matter can be resolved by attaching the Honorary Presidency Magistrates to certain courts. I do not agree with the opinion of the R.L.A. dated the 15th of July 1947, that that would not be enough and that the magistrate so attached must enjoy the status of a Court possessing powers. If I am right in saying that a magistrate is a court notwithstanding that he may have no powers of taking evidence, then the attachment in this manner would be sufficient.

Sd/-

Advocate General.

KGG/14/5.
4Cs.

Office of the R.L.A.

Attestation of Documents.

Indian Evidence Act, 1872, sections 3, 57. High Court Circular No. 138.

A copy of the Advocate General's opinion, who was consulted, is forwarded herewith.

Sd/- P.N.L.
18/10.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 10133, dated the 21st October 1947.

KCC/1^/6.
4Ce.

Legal Department.
R.I. NO.12682 dated 20-10-1947.

Submitted.

2. Please see C.S.D.-(Estt.) note at p. 25 ante The facts of the case in brief are that one Mr. D.R. Lanjekar, was prosecuted for having committed a breach of the clause 6 of the Bombay Firewood Trade Licensing Order 1944. He made an application to the Government to withdraw the prosecution and it was withdrawn for reasons stated in H.M.C.S.D.'s minutes at p. 14 ante. Sometime back, a senior clerk and control Sheristeder were caught by the Police Inspector Anti-corruption Branch Poona with the help of Mr. Lanjekar for having attempted to take gratification from Mr. Lanjekar. Now a petition has been received from Mr. Kaleskar the Control Sheristedar Requesting Government to forward to him the following documents:-

(a) Original application made by Lanjekar for withdrawal of the case.

(b) Remarks of the District Magistrate Poona.

(c) Reasons, if any for granting sanction for withdrawal of prosecution.

(d) All other papers of the case.

3. The C.S.D. (Estt. is of the opinion that the applicant may be informed that the available documents will be produced in court on receipt of the summons, as it appears from the perusal of these papers that it would not be objectionable to place them before the court.

connection....

4. The papers have been referred to R.L.A. for advise whether the applicant should be informed as at A above.

5. Sec. 123 of the Indian Evidence Act provides that the "No one shall be permitted to give any evidence derived from the unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give, or withhold such permission as he thinks fit."

And as the C.S.D. has decided that there is no objection to place these before the Court, there is no objection to inform the applicant in terms of "A" of ~~the~~ their note.

5. But sec. 124 of the Indian Evidence Act provides that "No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that public interests would suffer by the disclosure." In Nagaraja Pillai vs. Secretary of State, 26 Ind. Cas. 723-39 M.304 it was held that the words "communications made in official confidence" generally includes all matters communicated by one officer to another in the performance of duties. So C.S.D. may be informed that as the District Magistrate's report in the matter and the reasons for granting sanction for the withdrawal of prosecution are documents made in official confidence, the privilege can be claimed under sec 124 of the Act, if that Department so desires. P.T.O.

Sd/-
1/11.

The applicant should be informed that he is not entitled to copies of the documents. If he wants to produce them in any Court he may apply for a Summons for production of these documents.

The question of privilege can be considered when such summons is received.

Sd/-
1/11/47

U.R. to C.S.D. No. 10585/3-11-47.

L.D.R.I. No.10723 dated 11.9.47.

Submitted.

In his letter at p. 1 ante. Mr. Modi has requested permission to inspect (he does not require copies as presumed by R.D.) G.Rs. R.D. No.6116/28 dated the 2nd June 1931 and No.6116/23 dated the 12th December 1932 as he intends to submit an appeal to the Bombay Revenue Tribunal. These G.Rs. contain references to opinions of Government officers and in view of R.L.A.'s opinion No.5746 dated the 19th August 1946 R.D. porposes to refuse his request. R.L.A. is however requested to advise.

As advised by the R.L.A. in his opinion No.5746 dated the 19th August '46 a Govt. resolution, containing opinions of Govt. officers including a legal adviser, is a privileged document within the meaning of sec. 123 of the Indian Evidence Act and inspection thereof can be refused. If Govt. considers that G.Rs. in question will not be intelligible without reading the opinions of Govt. officers to which they make references, Govt. will be entitled to refuse inspectio

Sd/- M.P.R.
13/9.

I agree.
Sd/-
15/9/47.

The applicant has not asked for copies of G.Rs. but for their inspection. Since the G.Rs. contain references to opinions of Govt. officers without reading of which the G.Rs. would not be intelligible, there would be no legal objection to refusing

P.T.O.

inspection on the ground that such C.Rs.are
privileged
~~popular~~ documents

Sd/- R.T.E.
16/9

R.R.A.

Sd/- P.M.L.
16/9.

Office of the R.L.A.

The applicant has not asked for copies of Government Resolutions but for their inspection. Since the Government Resolutions contain references to opinions of Government officers without the reading of which the Government Resolutions would not be intelligible, there would be no legal objection to refusing inspection on the ground that such Government Resolutions are privileged documents.

Sd/- P.K.L.
16/9
Remembrancer of Legal Affairs.

U.R. to R.D., No. 9329, dated the 19th September 1947.

KGG/14/6.

L.D.R.L. No. 13739 dated 18-11-47.

Submitted.

By G.R., R.D. No. 1033/45 dated the 20th May 1946, Govt. in R.D. sanctioned the prosecution of Police Patel, Baba Dsenudas and also recorded its agreement with A.L.A.'s opinion that sanction for prosecution of Mr. Dsart was unnecessary as he was removable by the Collr. (vide G.R. at pp. 21-23-ante) This G.R. is required for production in Court (vide p. 33) and R.D. is of opinion that there is no objection to produce a certified copy in Court (vide R.D. note at p. 31 ante). The A.L.A. is however requested to advise.

2. For a successful prosecution production of the C.R. would be imperative and ordinarily there would be no objection to producing a certified copy of the same(minus A.L.A.'s opinion in the preamble). In this case, however, the C.R. has been signed by Mr. Walawalkar for "His Exc, Under Secy. to Govt." The C.R. is hence defective (cf. A.L.A.'s opinion No. 4131 dated the 30th May 1945); and the prosecution of the Police Patel would be invalid. The defect can only be cured by issuing a fresh sanction properly signed and starting the proceedings a fresh against the Police Patil.

Sd/- M.P.Rege.
19/4

A.S. I agree

Sd/- 19/11/47.

A.L.R. Reply may be as in para 2

Sd/- R.T.K.
19/11

R.L.A. Please ascertain from R.D. the circumstan
es under which Mr. Walawalkar signed the G.R.
was he not authorised to sign it.

Sd/- P.M.L.
19/11

Submitted with reference to R.L.A.'s query &
directions.

It is understood from R.D. that such G.Rs.
are signed by the Assistant Secretary after the
case is seen by the Under Secretary and orders
of Government are obtained. In accordance with
this practice, the G.R. in question was signed
by Mr. Walawalkar who was at that time Assistant
Secretary, R.D. This practice of signing by
Assistant Secretary for his superior officer
is bad (see P. &.S.D. Circular No. 996/37 dated
18th October 1945 and I.L.R. 50 Cal 136). Mr.
Walawalkar could have no doubt signed in his
Official capacity as Assistant Secretary (Assis-
tant Secretary is authorised to sign- vide Rule
13 of Rules of Business) but he having signed for
some other officer, sanction has been rendered
invalid.

Sd/- M.P.R.
21/11

A.L.R. We may bring to the notice of R.D. the
defect and say that it is necessary to produ e

P.T.O.

an authenticated copy of the sanction order.

Sd/- R.T.K.
21/11

R.L.A. Yes, let us not commit ourselves to the position that sanction is bad. It may be necessary to prove that Mr. Walawalkar was authorised to sign.

Sd/- P.M.L.
21/11

KGG/14/6
4Cs.

Office of the R.L.A.

There is no objection to producing a certified copy of the Government Resolution minus the Remembrancer of Legal Affairs' opinion in the Preamble; but it may be necessary to prove that Mr. Walwalkar was authorised to sign.

Sd/- P.M.L.
22/11
Remembrancer of Legal Affairs.

U.R. to H.D., No. 11229, dated the 25th November 1947.

KGO/14/6
4Cs.

R.I.No. 11879 dt. 30-9-47.

Submitted.

2. Fl. see R.D. note at p. 11 ante and the petition made by the agriculturists of Sarod on 31-8-46 to Govt. regarding entry of their names as occupants, in the Record of Rights. It appears that the dispute betwee the agriculturists and the Thakor of Sarod is in regard to the wantas which have been treated as non-applicable talukadri and to which Record of Rights have been applied. It appears that these lands were first granted to the bhayats of the estate for maintenance, who subsequently disposed them of to others. These bhayats or their successors or their alienees pay only judi to the Thakore and the Thakore pays the judi in lump sum to Govt. These persons in actual possession of the lands are stated to be in a position of permanent tenants liable to pay only judi to the Thakore. The agriculturists (petitioners) were therefore informed by Govt. through Mr.A.A.Patel, M.L.A., that they should get their titles settled in a court of law and if they fail to do so the Collr. would take steps to enter their names as permanent tenants. The Thakore has requested him to grant him a certified copy of the petition, dated 31-8-46, from agriculturists of Sarod addressed to Govt. This request was refused by Govt. (p. 7 ante). The Thakore has now requested to quote the provisions of the law under which the request for a copy was refused.

connection.....

On reconsideration R.D. come to the conclusion that as the petition is made against him he has a right for a certified copy of the petition. The R.L.A. is requested to advise in the matter.

3. On representation by the agriculturists of Sarod to the Govt., the Collr. was directed to take steps to enter their names as permanent tenants if they did not get their titles settled in a Court of law. Presumably the Thakore's intention in asking for a certified copy of this representation is to dispute the correctness of the decision of the Govt. The Thakore being interested would presumably have a right to inspect the petition and therefore would be entitled to a copy of the same under section 76 of the Evidence Act. The petition is not a confidential document ~~xxx~~ unless Government ~~fi~~le that its disclosure would be detrimental to public interest. There would be no objection to supplying a certified copy of the petition on payment of the usual fees for the same.

Sd/-
22/11

A.S. I agree.

Sd/-
22/11/47

A.L.R. Sd/- R.T.K.
22/11

R.L.A. Sd/- P.M.L.
22/11

Reply as ~~xx~~ AA

KGG/14/6
4Cs.

U.R. to R.D. No. 11304, dated 26-11-1947.

Mr. D. K. Ghanekar, the plaintiff in Poona Civil Suit No.1036/1946 has made an application to the Secy., R.D. requesting him to supply copies of five documents stated below :-

1. An application dated 10-8-1896 from Mr. Mahomad sultan Patil and others of Rajuri requesting H.E. the Governor to give them the Chawdi.

2. The representation of the Hindus of Rajuri stating their objections against giving the Chawdi to muslims.

3. H.E. the Governor's decision on the above application.

4. A second appeal made by the Muslims of Rajuri to H.E. on 12-10-1896, and

5. H.E.'s reply to above.

The R.D. has forwarded the application to the R.L.A. for advice whether there is any objection to the giving of the copies of the above documents to the plaintiff.

2. The Government of Bombay is the defendant in this suit. Obviously, the plaintiff wants copies of these documents for tendering them in evidence against Government. In submitting his application to Government for the supply of certified copies of these documents, he has followed a wrong procedure. If he intends to produce these documents in Court as his evidence the correct procedure for him to follow is to give notice to the defendant for production of documents under Order 11, rule 15 of the Civil

connection....

Procedure Code. The question of privilege can be considered if and when such notice is received. It is also not necessary to inform the plaintiff of the procedure which he should follow if he wants these documents to be produced in court. He can seek that advice from his pleader. For the present, he should simply be informed that his request for certified copies of the abovesaid documents cannot be granted.

Sd/- R.M.
14/12/47.

If we do that much only that will be ~~continued~~ construed as a refusal on ~~the~~ our part to produce the documents and ~~would~~ may lead to ~~the advice inference~~ an adverse influence against us. It is better to send a reply in terms of A.

Sd/- P.M.L.
4/12

KGG/14/6
4Cs.

Office of the R.L.A.

Revenue Department may inform the plaintiff that if he intends to produce these documents in Court as his evidence, the correct procedure for him to follow is to give notice to the defendant for ~~xxx~~ production of documents under Order 11, rule 15 of the Civil Procedure Code.

2. The question of privilege can be considered if and when such notice is received.

Sd/- P.M.L.
8/12
Remembrancer of Legal Affairs.

U.R. to R.D., No. 11812 dated the 9th December 1947.

KGG/14/6
4Ce.